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Message Text

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----------067972 212231Z /12
R 211903Z AUG 78
FM SECSTATE WASHDC
TO AMEMBASSY BUENOS AIRES

UNCLAS STATE 211804

E.O. 11652:N/A

TAGS: EFIN

SUBJECT:PROPOSED AGREEMENT ON RECIPROCAL EXEMPTION OF AIR
AND MARITIME TRANSPORT COMPANY INCOME

REFERENCE: BUENOS AIRES 5168

1. THERE IS ONE SERIOUS PROBLEM WITH PROPOSED ARGENTINE
TEXT OF EXCHANGE OF NOTES ON SHIPPING AND AIRCRAFT
EXEMPTION, ONE POTENTIAL PROBLEM AND A COUPLE OF POINTS
ON WHICH CLARIFICATION IS REQUESTED.
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2. THE SERIOUS PROBLEM ARISES FROM THE FACT THAT U.S.
STATUTORY AUTHORITY TO EXEMPT FOREIGN SHIPPING AND AIRLINE
COMPANIES IS LIMITED TO THAT PROVIDED IN SECTIONS 872 AND
883 OF THE INTERNAL REVENUE CODE, SO THE EXEMPTION APPLIES
ONLY TO FEDERAL INCOME TAXES. THERE IS NO STATUTORY
AUTHORITY TO EXEMPT FOREIGN SHIPPING AND AIRLINE
COMPANIES FROM ANY STATE OR LOCAL TAXES OR FROM (POSSIBLE
FUTURE) FEDERAL TAXES ON PROPERTY, SALES, ETC.

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INSERTING THE WORDS "BY IT" IN ARTICLE 2 AFTER "...AND FROM ANY TAX THAT MAY BE APPLIED..." WOULD CLARIFY THAT ONLY FEDERAL TAXES ARE COVERED. BUT THE REST OF THAT SENTENCE IMPLIES THAT EXEMPTION IS ASSURED FROM POSSIBLE FUTURE FEDERAL TAXES ON ASSETS. THERE IS NO SUCH FEDERAL TAX NOW OR CONTEMPLATED. WE THEREFORE PROPOSE DELETING ALL OF ARTICLE 2 AFTER THE WORDS "INTERNAL REVENUE CODE OF 1954." (IS THE BUENOS AIRES TAX CONSIDERED A TAX ON ASSETS BUT MEASURED AS A PERCENT OF GROSS RECEIPTS?)

3. ARTICLE 4 MAKES THIS EXCHANGE RETROACTIVE TO 1950. (NOTE HOWEVER THAT THE AGREEMENT SIGNED IN 1950 WAS EFFECTIVE AS OF 1946) BUT ARTICLE 5 APPEARS TO SAY THAT FOR PURPOSES OF THE BUENOS AIRES FREIGHT TAX, THE AGREEMENT IS RETROACTIVE ONLY TO THE LAST FULL FISCAL YEAR. SINCE MOORE-MC CORMACK HAS NO PROBLEM WITH THE ARGENTINE PROPOSAL WE ASSUME EARLIER CONCERN THAT BUENOS AIRES TAX WOULD APPLY RETROACTIVELY TO 1966 NO LONGER A PROBLEM. IN THAT CASE, SINCE THE BUENOS AIRES TAX IS THE ONLY REASON FOR REVISING THE AGREEMENTS, WE CAN AVOID THE RETROACTIVITY ISSUE BY DELETING ARTICLE 4 AND RENUMBERING ARTICLE 5, NOTING THAT ONCE IN EFFECT THIS AGREEMENT SUPERSEDES THAT SIGNED ON JULY 20, 1950.

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4. WE MAY HAVE A PROBLEM IN ARTICLE 3A WITH THE EXEMPTION OF U.S. CITIZENS ONLY IF RESIDENT IN THE UNITED STATES AND OF U.S. CORPORATIONS ONLY IF NOT CONSIDERED RESIDENT IN ARGENTINA UNDER ARGENTINE LAW. WE REALIZE THAT PRESENT EXCHANGE OF NOTES HAS THE SAME LIMITATION. WE HAVE NO PROBLEM IN EXCLUDING U.S. CITIZENS RESIDENT IN ARGENTINA, BUT IRS IS REVIEWING THE REQUIREMENTS IN REGARD TO U.S. CITIZENS IN THIRD COUNTRIES AND U.S. CORPORATIONS MANAGED IN ARGENTINA GIVEN THE BROAD REFERENCES TO U.S. CITIZENS IN I.R. CODE.

5. PLEASE EXPLAIN THE REFERENCE TO ESTATES IN ARTICLE 3(B)
CHRISTOPHER

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ISecure: 1
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Review Content Flags:
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